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7 *Counsel for Plaintiff Dale Miller,*  
8 *John F. Barton, Jr., and all others*  
*similarly situated.*

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14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16

17 DALE MILLER and JOHN F.  
18 BARTON, JR., on behalf of themselves  
and all others similarly situated,

19 Plaintiffs,

20 v.

21 METLIFE, INC., a Delaware  
22 Corporation; METROPOLITAN LIFE  
INSURANCE COMPANY, a New York  
23 Corporation; and DOES 1-10, inclusive,

24 Defendants.  
25  
26  
27  
28

) Case No.

) **CLASS ACTION COMPLAINT**

) **1. BREACH OF CONTRACT**

) **2. FRAUD**

) **JURY TRIAL DEMANDED**

1 Plaintiffs DALE MILLER (“MR. MILLER”) and JOHN F. BARTON, JR.  
2 (“MR. BARTON”), on behalf of themselves and all others similarly situated, allege  
3 the following:

4 **JURISDICTION AND VENUE**

5 1. This Court has diversity jurisdiction over this class action pursuant to 28  
6 U.S.C. § 1332 as amended by the Class Action Fairness Act of 2005 because the  
7 matter in controversy exceeds \$5,000,000, exclusive of interest and costs, and is a  
8 class action in which some members of the class are citizens of different states than  
9 the Defendants. *See* 28 U.S.C. § 1332(d)(2)(A).

10 2. This Court also has personal jurisdiction over Defendants because  
11 Defendants are authorized to do business, and currently do business, in this state.

12 3. Venue is proper in this jurisdiction pursuant to 28 U.S.C. § 1391 because  
13 Defendants METLIFE, INC. and METROPOLITAN LIFE INSURANCE  
14 COMPANY have conducted business in this District and are subject to personal  
15 jurisdiction and a substantial portion of the conduct complained of herein occurred  
16 in this District.

17 **PARTIES**

18 4. Plaintiff, MR. MILLER, at all relevant times herein, was and is a citizen and  
19 resident of the State of California. MR. MILLER entered into a contract with  
20 METLIFE, INC. and METROPOLITAN LIFE INSURANCE COMPANY  
21 (hereafter, collectively referred to as “MET LIFE” or “Defendants”) on or about  
22 March 22, 2000, when he accepted MET LIFE’s offer for a Group Variable  
23 Universal Life (GVUL) policy.

24 5. Plaintiff, MR. BARTON, at all relevant times herein, was and is a citizen and  
25 resident of the State of Colorado. MR. BARTON entered into a contract with MET  
26 LIFE in or about March 2000, when he accepted MET LIFE’s offer for a GVUL  
27 policy.

28 6. Defendant METLIFE, INC. is a Delaware corporation, with its corporate

1 headquarters located in the State of New York. METLIFE, INC. also conducts a  
2 substantial amount of business nationwide, including in California.

3 7. Defendant METROPOLITAN LIFE INSURANCE COMPANY is a New  
4 York corporation, with its corporate headquarters located in the State of New York.  
5 METROPOLITAN LIFE INSURANCE COMPANY also conducts a substantial  
6 amount of business nationwide, including in California.

7 8. Plaintiffs are unaware of the true names and capacity of the defendants sued  
8 as DOES 1-10, and therefore sue these defendants by fictitious names. Plaintiffs  
9 will seek leave to amend this Complaint when and if the true identities of these  
10 DOE defendants are discovered. Plaintiffs are informed and believe and thereon  
11 allege that each of the defendants designated as a DOE is responsible in some  
12 manner for the acts and occurrences alleged herein, whether such acts or  
13 occurrences were committed intentionally, negligently, recklessly or otherwise, and  
14 that each said DOE defendant thereby proximately caused injuries and damages to  
15 Plaintiffs and the Class as herein alleged, and is thus liable for Plaintiffs' and the  
16 Class's injuries.

17 9. At all times herein mentioned, Defendants, and each of them, were the  
18 agents, principals, servants, employees, and subsidiaries of each of the remaining  
19 Defendants, and were at all times acting within the purpose and scope of such  
20 agency, service, and employment, and directed, consented, ratified, permitted,  
21 encouraged, and approved the acts of each remaining defendant.

### 22 **PRELIMINARY ALLEGATIONS**

23 10. This action arises out of MET LIFE's practice of improperly charging certain  
24 of their non-smoking insureds smoker rates, which are higher than non-smoker  
25 rates, for their life insurance premiums, when the insureds did not enroll as  
26 smokers.

27 11. MR. MILLER is currently a commercial airline pilot with United Airlines  
28 ("United"), and he has been employed as a pilot with United since 1990. MR.

1 MILLER is also a member of the Airline Pilots Association (hereafter “ALPA”), the  
2 union for airline pilots with United.

3 12. As a pilot with United, MR. MILLER received several employee benefits  
4 including group rates on insurance services being offered by MET LIFE. MR.  
5 MILLER has taken advantage of these benefits after he first became employed with  
6 United in 1990 and has maintained some form of life insurance with MET LIFE,  
7 throughout his employment there.

8 13. When MR. MILLER first enrolled for life insurance services with MET  
9 LIFE, he was enrolled in either an Optional Term Life insurance (OTL) program or  
10 a Group Universal Life policy (GUL) program. In the event MET LIFE has asked  
11 MR. MILLER his status as a smoker or non-smoker, he would have indicated non-  
12 smoker status, as MR. MILLER has always been a non-smoker during the  
13 applicable periods, including the five-year look back periods.

14 14. In or about March of 2000, MR. MILLER received notice that his life  
15 insurance policy with MET LIFE would be changing from the OTL or GUL policy,  
16 to a Group Variable Universal Life (GVUL) policy.

17 15. On or about March 15, 2000, MR. MILLER completed a Group Variable  
18 Universal Life Special Enrollment Change Form (“GVUL enrollment form”), as he  
19 was instructed to do in order to ensure that his life insurance coverage would  
20 continue.

21 16. Section 1 of the GVUL enrollment form is labeled “Smoker/ Non-Smoker  
22 Status Change.” This section requires enrollees to select from the following status  
23 changes, “From Smoker to Non-Smoker” and “From Non-Smoker to Smoker.”  
24 Smoker is defined on the form as “anyone who has used a tobacco product within  
25 the past 12 months. Tobacco use includes cigarettes, cigars, pipes, chewing tobacco  
26 and snuff.” (See Exhibit “A”). As MR. MILLER has never been a smoker during  
27 the applicable periods, including the five-year look back periods, he logically left  
28

1 this section blank, as the only two options did not apply to him because he was not  
2 changing his status.

3 17. MR. MILLER also left the sections labeled “Section 2 Pilots Life Insurance  
4 Coverage Change,” “Section 3 Pilot’s Extra Monthly Contribution Change,” and  
5 “Section 5 Spouse’s Extra Monthly Contribution Change” blank, because they also  
6 did not apply to him.

7 18. On or about March 22, 2000, MET LIFE received MR. MILLER’s GVUL  
8 enrollment form. Soon thereafter, MET LIFE began to charge MR. MILLER on a  
9 monthly basis for the GVUL policy as a smoker per its apparently erroneous default  
10 policy when no change in smoking status box was selected on the GVUL  
11 enrollment form.

12 19. MET LIFE charged MR. MILLER the smoker rate at least since his coverage  
13 began under the GVUL policy.

14 20. From the time of his initial enrollment, MR. MILLER never received any  
15 notice or indication that he was being charged the smoker rate. This information  
16 was never provided in the annual policy statements MR. MILLER received, nor was  
17 it provided in any other communication MR. MILLER received from MET LIFE. It  
18 was not until recently, when MR. MILLER decided to reduce his GVUL policy  
19 coverage, that he determined he had been charged the smoker rate.

20 21. On or about October of 2016, MR. MILLER decided to change his GVUL  
21 policy coverage because he felt he no longer needed as much coverage as he had  
22 before. In order to change his coverage, MR. MILLER accessed his policy coverage  
23 through the MET LIFE Insurance link on the United Airlines Employee benefits  
24 website.

25 22. Once on the proper website MR. MILLER answered a variety of questions  
26 related to his personal life and the level of coverage he desired. When entering his  
27 personal information MR. MILLER was prompted to answer the question of “Have  
28 you smoked cigarettes, pipes, or cigars or used tobacco in any form in the past 5

1 years?” MR. MILLER selected “NO” for his response and then proceeded to fill out  
2 the rest of the online form.

3 23. Once the form was completed MR. MILLER was shocked to find, when  
4 looking at the price comparison, that his monthly premium should have been  
5 drastically lower than the current amount he had been paying for the last several  
6 years. MR. MILLER quickly called MET LIFE customer service to ensure he had  
7 filled out the online form correctly.

8 24. The MET LIFE customer service agent assured MR. MILLER he had  
9 correctly filled out the online form and the reduction in premium charges was due  
10 to the fact that MR. MILLER was changing his status to a non-smoker. MR.  
11 MILLER informed the agent that he was not a smoker and that he had never been  
12 one during the applicable periods, including the five-year look back periods. The  
13 agent then informed MR. MILLER that he had been labeled as a smoker for  
14 purposes of GVUL coverage since his enrollment back in March of 2000.

15 25. MR. MILLER was obviously shocked by this information and over the  
16 course of several months contacted various MET LIFE representatives, as well as  
17 union representatives from the ALPA to find out why he had been considered a  
18 smoker for GVUL purposes and how he could be refunded for the premium  
19 overcharges he had incurred for so many years.

20 26. On or about December 7, 2016, MR. MILLER received a letter from MET  
21 LIFE stating, “Metropolitan Life Insurance Company has processed your request to  
22 change to non-smoking rates. Your new monthly premium is \$344.92... Your  
23 certificate was issued on June 1, 2000 **with smoker rates set as the default**  
24 **because you did not indicate your smoking status during the initial enrollment.**  
25 We cannot refund any premium difference that may have occurred back in time. A  
26 copy of your enrollment form is attached. Any other enrollment materials from  
27 2000 are outside our document retention guidelines and no longer available.” (See  
28 Exhibit “B”)(Emphasis added).

1 27. As a comparison MR. MILLER's last pay stub before the non-smoker status  
2 was applied shows a deduction of \$420.38 for his GVUL Employee coverage. The  
3 new monthly premium of \$344.92 provides MR. MILLER with the exact same level  
4 of coverage he was receiving before. This amounts to a 19.7% overcharge in  
5 premium payments being incurred on a monthly basis.

6 28. MR. MILLER has paid his GVUL premium on time and in full, through an  
7 automatic deduction from his paycheck for the last 16 plus years. The GVUL  
8 coverage is based on a percentage of MR. MILLER's annual salary and as his  
9 salary has increased over the years, so has his GVUL coverage and thus his  
10 premiums.

11 29. At this time the exact amount of overcharges on the premiums is not known  
12 but the overcharges are substantial given that they have taken place over a 16 year  
13 period.

14 30. MR. BARTON recently learned from MR. MILLER that MET LIFE had  
15 been charging MR. MILLER smoker rates for his premiums on the GVUL policy,  
16 even though MR. MILLER had never been a smoker during the applicable periods,  
17 including the five-year look back periods.

18 31. After speaking to MR. MILLER, MR. BARTON became concerned that  
19 MET LIFE had also been charging him smoker rates for premiums on his own  
20 GVUL policy. For that reason, MR. BARTON looked up the premium rates he has  
21 been charged for his own GVUL policy with MET LIFE, to confirm whether this  
22 was true. MR. BARTON discovered he too has been charged smoker rates for the  
23 premiums on his own GVUL policy, even though he has never been a smoker  
24 during the applicable periods, including the five-year look back periods.

25 32. Mr. BARTON then requested multiple times to a MET LIFE representative  
26 that MET LIFE provide him with the GVUL enrollment form he would have filled  
27 out for enrollment in his own GVUL policy. In response to his multiple requests,  
28 MET LIFE has not agreed to provide MR. BARTON with a copy of his GVUL  
enrollment form.



1 33. In the event MET LIFE had asked MR. BARTON his status as a smoker or  
2 non-smoker, he would have indicated he was a non-smoker, as MR. BARTON was  
3 always a non-smoker during the applicable periods, including the five-year look  
4 back periods.

5 34. Upon information and belief, Plaintiffs allege MET LIFE overcharged  
6 similarly situated GVUL policy holders employed by United, by categorizing them  
7 as smokers if they failed to complete Section 1 of the GVUL enrollment form.

8 35. By accepting the GVUL enrollment form as completed by the enrollees and  
9 deducting the premium amount from the policy holders on a recurring basis, MET  
10 LIFE entered into binding contracts with MR. MILLER, MR. BARTON, and  
11 members of the putative class.

12 36. At all times mentioned herein, MR. MILLER, MR. BARTON, and all those  
13 similarly situated relied on MET LIFE's acceptance of their original status as a non-  
14 smoker for purposes of the OTL or GUL and therefore, did not select a  
15 status change for Section 1 of their GVUL enrollment form.

16 37. By setting the smoker rate as the default when enrollees originally filed their  
17 status as a non-smoker on the OTL or GUL, MET LIFE breached its contracts with  
18 MR. MILLER, MR. BARTON, and members of the putative class. Furthermore,  
19 this action constitutes a fraudulent scheme by which MET LIFE overcharged policy  
20 holders based on a status it knew to be incorrect.

21 38. MET LIFE continues to breach its contracts with members of the putative  
22 class, and engage in a fraudulent scheme, by continuing to enforce, bill, and  
23 demand on a regular basis from policy holders a higher smoker rate premium for  
24 GVUL coverage, when, in fact, MET LIFE knew non-smoker status and applicable  
25 rates should apply.

### **CLASS ACTION ALLEGATIONS**

26 39. Plaintiffs MR. MILLER and MR. BARTON bring this action on behalf of  
27 themselves and all others similarly situated, as members of the proposed California  
28



1 and Nationwide plaintiff class (collectively hereafter the “Class”) defined as  
2 follows:

3 **California Class:** All persons who resided in California at the time of  
4 the offer, or who currently reside in California, who entered into a  
5 contract with MET LIFE in response to a Group Variable Universal  
6 Life insurance offer in replacement of their Optional Term Life or  
7 Group Universal Life policy, wherein the enrollment form provided for  
8 a change in smoker status section which was left blank, and where  
9 MET LIFE charged smoker rates despite the class member’s status  
10 under the prior Optional Term Life or Group Universal Life policy  
11 being that of a non-smoker.

12 **Nationwide Class:** All persons who resided in the United States at the  
13 time of the offer, who entered into a contract with MET LIFE in  
14 response to a Group Variable Universal Life insurance offer in  
15 replacement of their Optional Term Life or Group Universal Life  
16 policy, wherein the enrollment form provided for a change in smoker  
17 status section which was left blank, and where MET LIFE charged  
18 smoker rates despite the class member’s status under the prior Optional  
19 Term Life or Group Universal Life policy being that of a non-smoker.

20 Specifically excluded from the proposed Classes are Defendants, any entities  
21 in which Defendants have a controlling interest, and the officers, directors,  
22 affiliates, legal representatives, successors, subsidiaries and/or assigns of  
23 Defendants, and any Judge who may be assigned to this matter.

24 40. This action is brought and may be properly maintained as a class action  
25 pursuant to the provisions of Federal Rule of Civil Procedure 23(a)(1)-(4) and  
26 23(b)(1)-(3). This action satisfies the numerosity, typicality, adequacy,  
27 predominance and superiority requirements of those provisions.

28 41. [Fed. R. Civ. P. 23(a)(1)] The Class is so numerous that the individual  
joinder of all of its members is impractical. While the exact number and identities

1 of Class members are unknown to Plaintiffs at this time and can only be ascertained  
2 through appropriate discovery, Plaintiffs are informed and believe the Class  
3 includes many thousands of members.

4 42. [Fed. R. Civ. P. 23(a)(2)] Common questions of fact and law exist as to all  
5 members of the Class which predominate over any questions affecting only  
6 individual members of the Class. These common legal and factual questions, which  
7 do not vary from class member to class member, and which may be determined  
8 without reference to the individual circumstances of any class member, include, but  
9 are not limited to, the following:

- 10 A. Whether Defendants entered into valid contracts with members of the  
11 Class;
- 12 B. Whether the terms of the contracts are governed by the smoker status  
13 that members of the putative Class declared on their Optional Term  
14 Life or Group Universal Life policy;
- 15 C. Whether Defendants breached the contracts with the Class when it  
16 charged the payment of premiums based on the smoker rate being set  
17 as the default when no status change was selected on the Group  
18 Variable Universal Life Special Enrollment Change Form;
- 19 D. Whether Defendants committed fraud through charging smoker rates to  
20 individuals which it knew or should have known were to be treated as  
21 non-smokers; and
- 22 E. The nature and extent of damages and other remedies to which the  
23 conduct of Defendants entitles the Class members.

24 43. [Fed. R. Civ. P. 23(a)(3)] Plaintiffs' claims are typical of the claims of the  
25 members of the Class. Plaintiffs and all members of the Class have sustained injury  
26 and are facing harm arising out of Defendants' common course of conduct as  
27 complained of herein. The losses of each member of the Class were caused directly  
28 by Defendants' wrongful conduct as alleged herein.

1 44. [Fed. R. Civ. P. 23(a)(4)] Plaintiffs will fairly and adequately protect the  
2 interests of the members of the Class. Plaintiffs have retained attorneys  
3 experienced in the prosecution of class actions, including complex consumer and  
4 mass tort litigation.

5 45. [Fed. R. Civ. P. 23(b)(3)] A class action is superior to other available  
6 methods of fair and efficient adjudication of this controversy, since individual  
7 litigation of the claims of all Class members is impracticable. Even if every Class  
8 member could afford individual litigation, the court system could not. It would be  
9 unduly burdensome to the courts in which individual litigation of numerous issues  
10 would proceed. Individualized litigation would also present the potential for  
11 varying, inconsistent, or contradictory judgments and would magnify the delay and  
12 expense to all parties and to the court system resulting from multiple trials of the  
13 same complex factual issues. By contrast, the conduct of this action as a class  
14 action, with respect to some or all of the issues presented herein, presents fewer  
15 management difficulties, conserves the resources of the parties and of the court  
16 system, and protects the rights of each Class member.

17 46. [Fed. R. Civ. P. 23(b)(1)(A)] The prosecution of separate actions by  
18 thousands of individual Class members would create the risk of inconsistent or  
19 varying adjudications with respect to, among other things, whether a valid contract  
20 existed, and if so, the terms of such contract.

21 47. [Fed. R. Civ. P. 23(b)(1)(B)] The prosecution of separate actions by  
22 individual class members would create a risk of adjudications with respect to them  
23 that would, as a practical matter, substantially impair or impede the ability of such  
24 non-party Class members to protect their interests.

25 48. [Fed. R. Civ. P. 23(b)(2)] Defendants have acted or refused to act in respects  
26 generally applicable to the Class, thereby making appropriate final and injunctive  
27 relief with regard to the members of the Class as a whole.  
28

**CLAIMS FOR RELIEF**

**FIRST CLAIM FOR RELIEF**

**(Breach of Contract)**

**By Plaintiffs and Putative Class Against All Defendants)**

49. Plaintiffs and the Class incorporate by reference each preceding paragraph as though fully set forth herein.

50. Plaintiffs and the Class entered into contracts with MET LIFE for life insurance, pursuant to the terms and conditions of MET LIFE's Optional Term Life (OTL) or Group Universal Life (GUL) policy and MET LIFE's Group Universal Variable Life (GVUL) policy offers.

51. Specifically, the GVUL policy enrollment form provided for a smoker status change only, and without such change, the smoker status should have been determined by the status originally applied for under the OTL or GUL policy.

52. Plaintiffs and the Class members performed all material terms required to accept the offer by completing all sections of the GVUL enrollment form that applied and returning the GVUL enrollment form to MET LIFE.

53. Plaintiffs and the Class members performed all material terms required by the contracts by making monthly premium payments.

54. Defendants breached the contracts when it charged Plaintiffs and the Class members smoker rates when they should have been charged non-smoker rates. This breach occurred even though Defendants knew or should have known the status of Plaintiffs and the Class members to be non-smokers based on their OTL or GUL coverage.

55. Defendants continue to breach the contracts by, on a monthly basis, requiring the Class members to continue to make premium payments at higher rates based on the defaulted smoker status and continue to deny repayment of past overcharges.

56. As a result of the foregoing, Plaintiffs and the Class members have been damaged in an amount to be proven at trial.

**SECOND CLAIM FOR RELIEF**

**(Fraud)**

**(By Plaintiffs and Putative Class Against All Defendants)**

57. Plaintiffs and the Class incorporate by reference each preceding paragraph as though fully set forth herein.

58. Upon information and belief, MET LIFE concealed and suppressed material facts concerning the policy status of Plaintiffs and Class members when their policy was changed from OTL or GUL to GVUL, and charged Class members smoker rates when they should have been charged non-smoker rates. Defendants accomplished their scheme by establishing an internal policy of designating as smokers those individuals who left blank the smoker status change section of the GVUL enrollment form, even though they knew or should have known that such policy would result in overcharging Plaintiffs and Class members as smokers when their original status was as a non-smoker.

59. MET LIFE ensured that the details of the fraudulent scheme would not be revealed to their insureds by failing to disclose each insured's smoker status in any annual policy report or statement. MET LIFE engaged in this fraudulent concealment at the expense of Plaintiffs and Class members.

60. Plaintiffs and Class members reasonably relied on MET LIFE's deceptive conduct and paid the overcharges as automatic deductions from their paychecks. Plaintiffs and Class members had no way of discerning the fraud absent taking the extraordinary step to check whether their paycheck deduction actually matched the amount that was listed on MET LIFE's policy rate tables or by calling the company to check their status.

61. Plaintiffs and Class members were not aware of the concealed and misrepresented material facts referenced above, and would not have acted as they did had they known the truth regarding their premium payments.

62. As a direct and proximate result of Defendants' fraudulent scheme, Plaintiffs and Class members sustained damages. They significantly over paid for premiums associated with their MET LIFE GVUL insurance coverage.

63. Defendants are liable to Plaintiffs and Class members for damages in an amount to be proven at trial.

64. Moreover, because Defendants acted wantonly, maliciously, oppressively, recklessly, deliberately, and with intent to defraud Plaintiffs and Class members for the purpose of enriching themselves at Plaintiffs' and Class members' detriment, Defendants' conduct warrants substantial punitive and exemplary damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, each individually and on behalf of all other persons similarly situated, pray for judgment against MET LIFE as follows:

1. An Order certifying the Class and any sub-classes thereof that the Court may deem appropriate, and appointing Plaintiffs DALE MILLER and JOHN F. BARTON, JR., and their counsel, to represent the Class;
2. An award of general damages according to proof;
3. Injunctive relief;
4. Attorneys' fees;
5. Exemplary and punitive damages;
6. Costs of suit; and
7. Any other relief the Court deems proper.

DATED: April 7, 2017

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: /s/ Joshua A. Fields  
MICHAEL L. KELLY  
BEHRAM V. PAREKH  
JOSHUA A. FIELDS

*Counsel for Plaintiff Dale Miller,  
John F. Barton, Jr., and all others  
similarly situated.*

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: April 7, 2017

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: /s/ Joshua A. Fields

MICHAEL L. KELLY  
BEHRAM V. PAREKH  
JOSHUA A. FIELDS

*Counsel for Plaintiff Dale Miller, John  
F. Barton, Jr., and all others similarly  
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